

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

PLACENTIA-YORBA LINDA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2010120655

ORDER DENYING STUDENT'S
MOTION FOR STAY PUT

On December 17, 2010, Student filed a motion for stay put. On December 21, 2010, District filed an opposition to Student's motion for stay put, and requested an OSC re: sanctions.

APPLICABLE LAW

Under federal and California special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, §§ 48915.5, 56505, subd. (d).) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent School Dist.* (5th Cir. 1983) 695 F.2d 949, 953; *D. v. Ambach* (2d Cir. 1982) 694 F.2d 904, 906.) For purposes of stay put, the current educational placement is typically the placement called for in the student's Individualized Educational Program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

California Code of Regulations, title 5, section 3042, defines "educational placement" as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP.

DISCUSSION

The last agreed upon and implemented IEP was signed by the parties on May 10, 2009. The IEP provided Student with a general education placement and Designated Instructional Services (DIS) in the form of 45 minutes per week of Occupational Therapy (OT), provided by a non-public agency (NPA) on the school campus during the school day on a pull out basis. The parents and the NPA separately arranged, outside of the IEP team setting, that the NPA could provide those services to Student on campus after-school. The NPA no longer has a staff member available to provide these services after school hours.

Student's motion for stay put requests that Student be allowed to receive the NPA services after school as it previously arranged with the NPA. The District filed copies of the May 10, 2009 IEP, declarations from the NPA supervisor, and the CDE response to Student's compliance complaint.

Student's last agreed upon and implemented IEP of May 10, 2009 states that his OT services require his removal from general education for part of the school day for specialized instruction. The specified location for the delivery of service was a "separate classroom in a public integrated facility." Student's separate arrangement with the NPA provider to provide OT after school hours was not an IEP team decision, and is therefore not part of Student's May 10, 2009 IEP. Accordingly, Student is not entitled to the requested stay-put services.

ORDER

1. Student's motion for a stay-put provision of OT services delivered after school hours is denied.
2. District's request for an OSC re: sanctions is denied.

Dated: December 27, 2010

/s/

DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings